

exemption, whether 75 percent of the establishment's sales are recognized as retail in the particular industry, sales of coal to the consumer from a dealer's yard storage, where bulk is broken, are recognized as retail if they meet the requirements for such classification as previously explained in this subpart. It has been determined that the following sales do not meet such requirements and are not so recognized even if made from a dealer's yard storage:

(1) Sales where the delivery is made by railroad car or cargo vessel.

(2) Sales in a carload quantity or more for continuous delivery by truck from a dock, mine or public railroad facility.

(3) *Sales of coal at a wholesale price.* A wholesale price is a price comparable to or lower than the establishment's price in sales described in paragraphs (a)(1) and (2) of this section or in sales to dealers (but not peddlers) for resale. If the establishment makes no such sales, the wholesale price is the price comparable to or lower than the price prevailing in the immediate area in sales described in paragraphs (a)(1) and (2) of this section or in sales to dealers (but not peddlers) for resale.

(4) Sales of coal for use in the production of a specific product to be sold in which coal is an essential ingredient or the principal raw material, such as sales of coal for the production of coke, coal gas, coal tar, or electricity.

(b) "*Sales for resale.*" In determining for purposes of the 13(a)(2) exemption, whether 75 percent of the establishment's sales are not made for resale, "sales for resale" will include sales of coal to other dealers, to peddlers, and sales of coal for use in the production of a specific product to be sold, in which coal is an essential ingredient or the principal raw material, such as sales of coal for the production of coke, coal gas, coal tar, or electricity. This is distinguished from sales of coal for use in the general manufacturing or industrial process such as the use in laundries, bakeries, nurseries, canneries, etc., or for space heating, which are not sales made for resale.

ICE MANUFACTURERS AND ICE DEALERS

**§ 779.358 May qualify as exempt 13(a)(2) or 13(a)(4) establishments.**

(a) An establishment engaged in selling ice may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act if it meets all the requirements of that exemption. Similarly, an establishment making the ice it sells may qualify as an exempt establishment under section 13(a)(4) of the Act if it meets all the requirements of that exemption.

(b) In determining whether the requirements of the 13(a)(2) exemption that 75 percent of the establishment's sales must not be made for resale and must be recognized as retail sales in the industry are met, sales of ice which meet all the requirements for such classification as previously explained in this subpart will be regarded as retail. The following sales have been determined not to qualify under the applicable tests for recognition as retail:

(1) Sales for resale.

(2) Sales of ice for icing railroad cars and for icing cargo trucks. However, sales of ice for the re-icing of cargo trucks are recognized as retail if such sales do not fall into the nonretail categories described in paragraphs (b) (4) and (5) of this section.

(3) Sales of ice in railroad car lots.

(4) Sales of ice of a ton or more.

(5) Sales of ice at a price comparable to that charged by the establishment to dealers or, if no sales are made to dealers by the establishment, at a price comparable to or lower than the prevailing price to dealers in the area.

(c) The legislative history indicates that iceplants making the ice they sell are among the establishments which may qualify as retail establishments under the section 13(a)(4) exemption. It appears that all iceplants which sell at retail are establishments of the same general type, permitting no separate classifications with respect to recognition as retail establishments. Any iceplant which meets the tests of section 13(a)(2) will, therefore, be considered to be recognized as a retail establishment in the industry. Of course, the establishment must also meet all the other tests of section 13(a)(4) to qualify for the exemption.

(d) There are some iceplants which meet the section 13(a)(2) exemption requirements, but do not meet all of the section 13(a)(4) requirements. In such establishments, there may be some employees whose duties relate to both the sales portion of the business and the making or processing of ice. These employees will not qualify for exemption. However, in such establishment, there may be some employees who work primarily for the retail sales portion of the business and also perform incidental clerical, custodial, or messenger service for the manufacturing operation. For example, office workers may keep records of both the manufacturing activities and of the retail sales departments, maintenance workers may clean up in both parts of the establishment, and messengers may perform services for both activities. If these employees spend relatively little time in the work related to the ice manufacturing portion of the business, they will not, as an enforcement policy, be regarded as engaged in the making or processing of ice. Such an auxiliary employee will thus be exempt under section 13(a)(2) in any workweek in which an insubstantial amount of his time (20 percent or less) is allocable to the clerical, messenger, or custodial work of the ice manufacturing operations.

LIQUEFIED-PETROLEUM-GAS AND FUEL  
OIL DEALERS

**§ 779.359 May qualify as exempt  
13(a)(2) establishments.**

A liquefied-petroleum-gas or fuel oil dealer's establishment may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act if it meets all the requirements of that exemption. (It should be noted, however, that employees of certain enterprises engaged in the wholesale or bulk distribution of petroleum products may be partially exempt from the overtime provisions of the Act under section 7(b)(3). This overtime exemption is discussed in a separate bulletin, part 794 of this chapter. Liquefied-petroleum-gas means butane, propane and mixtures of butane and propane gases.

**§ 779.360 Classification of liquefied-petroleum-gas sales.**

(a) *General.* In determining, under the 13(a)(2) exemption, whether 75 percent of the establishment's sales are not for resale and are recognized as retail sales in the industry, sales to the ultimate consumer of liquefied-petroleum-gas, whether delivered in portable cylinders or in bulk to the customer's storage tanks, are recognized as retail in the industry if they meet all the requirements for such classification as previously explained in this subpart. The following are not recognized as retail:

(1) Sales in single lot deliveries exceeding 1,000 gallons;

(2) Sales made on a competitive bid basis (this term covers sales made pursuant to an invitation to bid, particularly sales to Federal, State and local governments; sales made in a like manner to commercial and industrial concerns and institutions are also included); and

(3) Sales for use in the production of a specific product in which the gas is an essential ingredient or principal raw material, such as sales of liquefied-petroleum-gas for the production of chemicals and synthetic rubber; and

(4) Sales of liquefied-petroleum-gas for use as truck or bus fuel and the repair and servicing of trucks and buses used in over-the-road commercial transportation (including parts and accessories for such vehicles).

(b) *Sales or repairs of tanks.* Sales or repairs of tanks for the storage of liquefied-petroleum-gas are recognized as retail in the industry, except: (1) Any tank exceeding 1,000 gallons in capacity; (2) any tank sold or repaired on the basis described in paragraph (a) (2) of this section or for the purposes described in paragraph (a)(3) of this section; and (3) sales in quantity larger than involved in the ordinary sales to a farm or household customer.

(c) *Conversion units.* Sales and installation of units for converting pumps, stoves, furnaces and other equipment and appliances to the use of liquefied-petroleum-gas, are recognized as retail sales except: (1) Sales of the installation of such conversion units which involve substantial modification of the appliance or equipment; (2) sales and installation of such units to be used in